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Date:

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LEGEND:

Distributing 3 =

Distributing 2 =

Distributing 1 =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

DRE 10 =

Business A =

Business B =

Institutional
Investor(s) =

Countries =

Intercompany
Agreements =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

State 1 =

Y =

Z =

Intercompany
Note =

Dear :

This letter responds to your letter dated September 14, 2006, requesting rulings as to the federal income tax consequences of a series of completed and proposed transactions. Additional information was submitted on November 7, 2006, December 14, 2006, January 09, 2007 and January 26, 2007. The information submitted for consideration in the initial request and the additional information provided is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation (see §§ 355(e)(2)(A)(ii) and 1.355-7).

SUMMARY OF FACTS

Distributing 3 is a publicly traded holding company and the common parent of an affiliated group whose includible corporations join in filing a consolidated federal income tax return (the “Distributing Group”). The Distributing Group and its foreign subsidiaries are engaged in Business A and Business B. The Institutional Investors operate funds each of which collectively owns more than five percent of the stock of Distributing 3. Distributing 3 has represented that no single fund operated by the Institutional Investors, or group of funds managed by the same individual or with the same investment objective, owns five percent or more of the stock of Distributing 3. To the best knowledge of Distributing 3, there are no other shareholders who own five percent or more of the stock of Distributing 3.

Prior to the Proposed Transaction (defined below), Distributing 3 wholly owned Distributing 2; Distributing 2 wholly owned DRE 1, an entity disregarded for federal income tax purposes (a “disregarded entity”); Distributing 2 also wholly owned DRE 2, a disregarded entity; DRE 1 wholly owned DRE 3, a disregarded entity; DRE 3 owned Sub 1; Sub 1 wholly owned Sub 3; DRE 2 wholly owned Sub 2; Sub 2 wholly owned DRE 4 and DRE 5, both disregarded entities; and DRE 4 wholly owned DRE 6, a disregarded entity.

Distributing 2 and the entities it owns directly and indirectly conduct Business A and will continue to do so following the Proposed Transaction. Also, Distributing 1 (described below) will conduct Business A in Countries through the entities it owns directly and indirectly. Following the Proposed Transaction, Controlled (described below) will conduct Business B through the entities it will own directly and indirectly.

Financial information has been received indicating that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 3's management believes that the full potential of each of Business A and Business B cannot be realized as long as the two businesses are operated in the same affiliated group. The purpose of the Proposed Transaction is to enhance the success of each of Business A and Business B by (i) permitting management to focus on maximizing the potential of each of Business A and Business B by allowing independent management teams to focus their resources more effectively on the unique business strategy of each of the businesses, (ii) maximizing employee retention and recruitment, (iii) improving public perception challenges resulting from the operation of the different businesses, and (iv) enhancing the credit profiles of the separate businesses.

The Proposed Transaction includes, and is entered into to effect, a series of distributions whereby (i) at least 80% of the stock of Controlled is distributed by Distributing 1 to DRE 1, followed by a distribution of at least 80% of the stock of Controlled by DRE 1 to Distributing 2 (the "First Distribution"); (ii) at least 80% of the stock of Controlled is distributed by Distributing 2 to Distributing 3 (the "Second Distribution"); and (iii) at least 80% of the stock of Controlled is distributed by Distributing 3 to its shareholders (the "Final Distribution" and together with the First Distribution and the Second Distribution, the "Distributions").

Subsidiaries of DRE 3 (which is transferred to Controlled as part of the Proposed Transaction) have, in the ordinary course of business, become obligated under certain financial instruments that Distributing 3 and its subsidiaries have guaranteed. Pursuant to the terms of the Intercompany Agreements, Distributing 3 and its subsidiaries will continue to guarantee such instruments until the completion of performance on the contracts underlying such instruments. In addition, Distributing 3 has guaranteed the performance by subsidiaries of DRE 3 on certain contracts and will continue to do so until the completion of performance on such contracts.

PROPOSED TRANSACTION

To effect the separation of Controlled from the Distributing Group, Distributing 3 proposes the following, partially completed, series of transactions (the "Proposed Transaction"):

- (1) On Date 1, Distributing 2 contributed to DRE 1 \$a of intercompany receivables owed by Sub 1 to Distributing 2; DRE 1 then contributed the same receivables to DRE 3.

- (2) On Date 2, DRE 3 formed two new entities, Sub 4 and Sub 5; on the same date Sub 4 formed two new limited liability companies, DRE 8 and DRE 9, each a disregarded entity; and on Date 3, DRE 9 formed Sub 6.
- (3) On Date 4, Sub 1 merged into Sub 4.
- (4) On Date 4, Sub 4 and DRE 8 merged and three new entities were formed as a result of the merger under State 1 law: Sub 7, DRE 10, a disregarded entity, and Sub 8. As a result, DRE 3 wholly owned Sub 7 and Sub 5; Sub 7 wholly owned DRE 9, DRE 10, and Sub 3; DRE 9 wholly owned Sub 6; and DRE 10 wholly owned Sub 8.
- (5) On Date 4, Sub 7 merged into Sub 5; DRE 10 merged into DRE 9; and Sub 8 merged into Sub 6.
- (6) On Date 4, DRE 3 distributed the stock of Sub 5 to DRE 1 and DRE 1 then contributed the equity interests in DRE 3 to Sub 5.
- (7) On Date 4, Sub 5 contributed its stock in DRE 9 and Sub 3 to DRE 3.
- (8) On Date 5, Sub 5 changed its name to Distributing 1 and DRE 9 changed its name to DRE 7.
- (9) On Date 6, Distributing 1 formed Controlled.
- (10) Prior to the Distributions, DRE 2 will distribute the stock of Sub 2 to Distributing 2, Distributing 2 will contribute the stock of Sub 2 to DRE 1, and DRE 1 will contribute the stock of Sub 2 to Distributing 1.
- (11) Prior to the initial public offering ("IPO"), Distributing 1 assumed all of DRE 3's liability with respect to Y and all of DRE 7's liability with respect to Z.
- (12) Prior to the IPO, Distributing 1 contributed its entire equity interest in DRE 3 to Controlled (the "Contribution"). Pursuant to the Contribution and the Intercompany Agreements, Distributing 1 granted to DRE 3 nonexclusive, royalty-free, perpetual licenses to certain intellectual property owned by the Distributing Group and DRE 3 granted to Distributing 1 nonexclusive, royalty-free, perpetual licenses to certain intellectual property contributed to the Controlled Group.
- (13) On Date 7, Controlled issued less than 20% of its single class of common stock to the general public in an IPO.

- (14) Prior to the Distributions, Controlled will pay \$b to Distributing 2 from the proceeds of the IPO and other cash in satisfaction of the Intercompany Note.
- (15) Distributing 1 will distribute to DRE 1 all of the Controlled stock held by Distributing 1, which will be 80% or more of the stock of Controlled.
- (16) DRE 1 will distribute to Distributing 2 all of the Controlled stock held by DRE 1, which will be 80% or more of the stock of Controlled (steps 15 and 16 together constitute the First Distribution).
- (17) Distributing 2 will distribute to Distributing 3 all of the Controlled stock held by Distributing 2, which will be 80% or more of the stock of Controlled (the Second Distribution).
- (18) Distributing 3 will distribute pro rata to its shareholders all of the Controlled stock held by Distributing 3, which will be 80% or more of the stock of Controlled (the Final Distribution). Distributing 3 will aggregate any fractional shares of Controlled that each Distributing 3 shareholder would otherwise be entitled to receive and sell them in the public market through a distribution agent. The aggregate net cash proceeds of these sales will be distributed ratably (in accordance with their fractional share interests) to those shareholders who would otherwise have received fractional shares of Controlled stock.

REPRESENTATIONS

The Contribution and First Distribution

The following representations are made in connection with the Contribution and First Distribution:

- (a) Other than as set forth in the Intercompany Agreements, Controlled will not be indebted to Distributing 1 after the First Distribution. The indebtedness, if any, will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 in the First Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) The five years of financial information provided on behalf of Business A, to be conducted by Distributing 1's separate affiliated group through Sub 2 following the First Distribution, is representative of the present business operations to be conducted by Distributing 1's separate affiliated group, and,

with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of Sub 2 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.

- (d) The five years of financial information provided on behalf of Business B, conducted through DRE 3, is representative of the present business operations of Controlled's separate affiliated group, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of DRE 3 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the First Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.
- (e) Following the First Distribution, each of Distributing 1 (through Sub 2) and Controlled (through DRE 3) will continue the active conduct of its business, independently and with its separate employees.
- (f) The Distributions will be carried out for the following corporate business purposes: the Distributions will (i) enhance the success of Business A and Business B by enabling each newly independent corporation to resolve management, systemic and other problems that arise (or are exacerbated) by operating the businesses within a single affiliated group, (ii) maximize employee retention and recruitment, (iii) improve public perception challenges resulting from the operation of the different businesses and (iv) enhance the credit profiles of the separate businesses. The Distributions are motivated, in whole or substantial part, by these corporate business purposes.
- (g) The Distributions are not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (h) The total fair market value of the assets transferred to Controlled by Distributing 1 will equal or exceed the aggregate adjusted basis of the transferred assets.

- (i) The liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (j) The fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (k) The total adjusted bases of the assets transferred to Controlled by Distributing 1 equals or exceeds the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, and (ii) the amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.
- (l) Distributing 1 did not accumulate its receivables or make extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (m) Other than as set forth in the Intercompany Agreements, no intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, the Distributions.
- (n) Immediately before the separation of Controlled, items of income, gain, loss, deduction and credit will be taken into account by the Distributing Group as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14, as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13, as published by T.D. 8597). Distributing 1 will not have an excess loss account with respect to the stock of Controlled immediately before the First Distribution.
- (o) Other than as set forth in the Intercompany Agreements, payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's-length.

- (p) Neither Distributing 1 nor Controlled is a investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (q) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.
- (r) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either: (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.
- (s) There is no acquisition of stock of Distributing 1 or Controlled (including any predecessor or successor of Distributing 1 or Controlled) that is part of a plan or a series of related transactions (within the meaning of § 1.355-7) that includes a distribution of the Controlled stock.

The Second Distribution

The following representations are made in connection with the Second Distribution:

- (t) Other than as set forth in the Intercompany Agreements, Controlled will not be indebted to Distributing 2 (or its affiliates) after the Second Distribution. The indebtedness, if any, with respect to the Intercompany Agreements will not constitute stock or securities.
- (u) No part of the consideration to be distributed by Distributing 2 in the Second Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (v) The five years of financial information provided on behalf of Business A, conducted by Distributing 2's separate affiliated group, is representative of the present business operations of Distributing 2's separate affiliated group,

and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of Distributing 2 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.

- (w) The five years of financial information provided on behalf of Business B, conducted through DRE 3, is representative of the present business operations of Controlled's separate affiliated group, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of DRE 3 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Second Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.
- (x) Following the Second Distribution, each of Distributing 2 and Controlled (through DRE 3) will continue the active conduct of its business, independently and with its separate employees.
- (y) The Distributions will be carried out for the following corporate business purposes: the Distributions will (i) enhance the success of Business A and Business B by enabling each newly independent corporation to resolve management, systemic and other problems that arise (or are exacerbated) by operating the businesses within a single affiliated group, (ii) maximize employee retention and recruitment, (iii) improve public perception challenges resulting from the operation of the different businesses and (iv) enhance the credit profiles of the separate businesses. The Distributions are motivated, in whole or substantial part, by these corporate business purposes.
- (z) The Distributions are not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.
- (aa) Distributing 2 did not accumulate its receivables or make extraordinary payment of its payables in anticipation of the Proposed Transaction.

- (bb) Other than as set forth in the Intercompany Agreements, no intercorporate debt will exist between Controlled and Distributing 2 after the Second Distribution.
- (cc) Immediately before the separation of Controlled, items of income, gain, loss, deduction and credit will be taken into account by the Distributing Group as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14, as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13, as published by T.D. 8597). Distributing 2 will not have an excess loss account with respect to the stock of Controlled immediately before the Second Distribution.
- (dd) Other than as set forth in the Intercompany Agreements, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's-length.
- (ee) Neither Distributing 2, nor Controlled is a investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ff) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.
- (gg) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either: (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.
- (hh) There is no acquisition of stock of Distributing 2 or Controlled (including any predecessor or successor of Distributing 2 or Controlled) that is part of a plan or a series of related transactions (within the meaning of § 1.355-7) that includes a distribution of the Controlled stock.

The Final Distribution

The following representations are made in connection with the Final Distribution:

- (ii) Other than as set forth in the Intercompany Agreements, Controlled will not be indebted to Distributing 3 (or its affiliates) after the Final Distribution. The indebtedness, if any, with respect to the Intercompany Agreements will not constitute stock or securities.
- (jj) No part of the consideration to be distributed by Distributing 3 in the Final Distribution will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3, except for restricted shares of Controlled common stock received by holders of restricted shares of Distributing 3 common stock granted pursuant to a stock incentive plan of Distributing 3.
- (kk) The five years of financial information provided on behalf of Business A, conducted by Distributing 3's separate affiliated group through Distributing 2, is representative of the present business operations of Distributing 3's separate affiliated group, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of Distributing 2 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Final Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.
- (ll) The five years of financial information provided on behalf of Business B, conducted through DRE 3, is representative of the present business operations of Controlled's separate affiliated group, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements provided. Neither the business of DRE 3 nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Final Distribution in a transaction in which gain or loss was recognized in whole or in part, except in connection with transfers between members of the affiliated group (as defined in § 1504(a), determined without regard to § 1504(b)) of which Distributing 3 was the parent, or in connection with the expansion of an existing five-year trade or business.

- (mm) Following the Final Distribution, each of Distributing 3 (through Distributing 2) and Controlled (through DRE 3) will continue the active conduct of its business, independently and with its separate employees.
- (nn) The Distributions will be carried out for the following corporate business purposes: the Distributions will (i) enhance the success of Business A and Business B by enabling each newly independent corporation to resolve management, systemic and other problems that arise (or are exacerbated) by operating the businesses within a single affiliated group, (ii) maximize employee retention and recruitment, (iii) improve public perception challenges resulting from the operation of the different businesses and (iv) enhance the credit profiles of the separate businesses. The Distributions are motivated, in whole or substantial part, by these corporate business purposes.
- (oo) The Distributions are not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled or both.
- (pp) Distributing 3's management, to its best knowledge, is not aware of any plan or intention on the part of any particular shareholder of Distributing 3 to sell, exchange, transfer by gift, or otherwise dispose of any stock of Controlled after the Distributions, other than (i) the IPO of Controlled stock and (ii) sales by some Institutional Investors that hold Distributing 3 stock whose policies would preclude them from owning Controlled stock. Any sales of Controlled stock following the Distributions by the Institutional Investors will be made in furtherance of its fiduciary duties to clients or investors.
- (qq) None of the Institutional Investors (i) has a representative on the board of directors of Distributing 3 or any affiliate of Distributing 3; (ii) has participated in the management or control of the Distributing Group; (iii) has in any way been notified or informed by the management of Distributing 3 of its plan for the Distributions, other than by means of the public announcement of the Distributions and information related to the IPO of Controlled stock available to institutional investors; (iv) has acted in a manner designed to influence the decision to make the Distributions; and (v) has participated in the negotiation or execution of any of the agreements or arrangements related to the Distributions.
- (rr) Distributing 3 did not accumulate its receivables or make extraordinary payment of its payables in anticipation of the Proposed Transaction.
- (ss) Other than as set forth in the Intercompany Agreements, no intercorporate debt will exist between Controlled and Distributing 3 after the Final Distribution.

- (tt) Immediately before the separation of Controlled, items of income, gain, loss, deduction and credit will be taken into account by the Distributing Group as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14, as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13, as published by T.D. 8597). Distributing 3 will not have an excess loss account with respect to the stock of Controlled immediately before the Final Distribution.
- (uu) Other than as set forth in the Intercompany Agreements, payments made in connection with all continuing transactions, if any, between Distributing 3 and Controlled, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arm's-length.
- (vv) Neither Distributing 3, nor Controlled is a investment company as defined in § 368(a)(2)(F)(iii) and (iv).
- (ww) For purposes of § 355(d), immediately after the Final Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Final Distribution.
- (xx) For purposes of § 355(d), immediately after the Final Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either: (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Final Distribution or (ii) attributable to distributions on Distributing 3 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Final Distribution.
- (yy) There is no acquisition of stock of Distributing 3 or Controlled (including any predecessor or successor of Distributing 3, or Controlled) that is part of a plan or a series of related transactions (within the meaning of § 1.355-7) that includes a distribution of the Controlled stock.
- (zz) The payment of cash in lieu of fractional shares of Controlled is solely to avoid the expense and inconvenience of issuing and maintaining fractional

shares and does not represent separately bargained for consideration. It is expected that the total cash that will be paid in lieu of fractional shares of Controlled stock will not exceed one percent of the total consideration that will be distributed in the Final Distribution. It is intended that no Distributing 3 shareholder will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled stock.

RULINGS

The Contribution and First Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Contribution and the First Distribution:

- (1) The Contribution followed by the First Distribution will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) No gain or loss will be recognized by Distributing 1 upon the Contribution to Controlled in exchange for Controlled stock or on Controlled’s assumption of liabilities in connection with the Contribution. Sections 361(a) and 357.
- (3) No gain or loss will be recognized by Controlled on the issuance of stock in connection with the Contribution or on Controlled’s assumption of liabilities in connection with the Contribution. Section 1032(a).
- (4) The basis of each asset received by Controlled in the Contribution will be the same as the basis of such asset in the hands of Distributing 1 immediately prior to the transfer of such asset to Controlled. Section 362(b).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which such asset was held by Distributing 1. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing 1 as a result of the First Distribution. Section 361(c).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 as a result of the First Distribution. Section 355(a)(1). Section 355(a)(3)(B) will not treat as “other property” any part of the Controlled stock constructively issued by Controlled to Distributing 1 in exchange for the licenses granted to Controlled in step (12) pursuant to the Intercompany Agreements.

- (8) Following the First Distribution, the aggregate basis of the Distributing 1 and Controlled stock in the hands of Distributing 2 will be the same as the aggregate basis of Distributing 1 stock held immediately before the First Distribution, allocated between the Distributing 1 and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2). Sections 358(a)(1), (b) and (c).
- (9) Following the First Distribution, the holding period of the Controlled stock received by Distributing 2 in the First Distribution will include the holding period of the Distributing 1 stock held by Distributing 2 immediately before the First Distribution, provided that the Distributing 1 stock is held as a capital asset on the date of the First Distribution. Section 1223(1).
- (10) Earnings and profits will be allocated between Distributing 1 and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3).

The Second Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Second Distribution:

- (11) No gain or loss will be recognized by Distributing 2 as a result of the Second Distribution. Section 355(c).
- (12) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 3 as a result of the Second Distribution. Section 355(a)(1).
- (13) Following the Second Distribution, the aggregate basis of the Distributing 2 and Controlled stock in the hands of Distributing 3 will be the same as the aggregate basis of Distributing 2 stock held immediately before the Second Distribution, allocated between the Distributing 2 and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2). Sections 358(a)(1), (b) and (c).
- (14) Following the Second Distribution, the holding period of the Controlled stock received by Distributing 3 in the Second Distribution will include the holding period of the Distributing 2 stock held by Distributing 3 immediately before the Second Distribution, provided that the Distributing 2 stock is held as a capital asset on the date of the First Distribution. Section 1223(1).
- (15) Earnings and profits will be allocated between Distributing 2 and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3).

The Final Distribution

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Final Distribution:

- (16) No gain or loss will be recognized by Distributing 3 as a result of the Final Distribution. Section 355(c).
- (17) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 3's shareholders on their receipt of the Controlled stock in the Final Distribution. Section 355(a)(1).
- (18) Following the Final Distribution, the aggregate basis of the Distributing 3 and Controlled stock in the hands of Distributing 3's shareholders (including any fractional interest in Controlled stock to which the shareholders may be entitled) will be the same as the aggregate basis of Distributing 3's stock held immediately before the Final Distribution, allocated between the Distributing 3 and Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2). Sections 358(a)(1), (b) and (c).
- (19) Following the Final Distribution, the holding period of the Controlled stock received by each Distributing 3 shareholder in the Final Distribution will include the holding period of the Distributing 3 stock held by such shareholder immediately before the Final Distribution, provided that the Distributing 3 stock is held as a capital asset on the date of the First Distribution. Section 1223(1).
- (20) Earnings and profits will be allocated between Distributing 3 and Controlled in accordance with §§ 312(h), 1.312-10(a) and 1.1502-33(e)(3).
- (21) Payments made by the Distributing Group to Controlled or by Controlled to the Distributing Group under the Intercompany Agreements that (i) have arisen or will arise for a taxable period ending on or before the Distributions or for a taxable period beginning before and ending after the Distributions and (ii) will not become fixed and ascertainable until after the Distributions, will be treated as occurring immediately before the Distributions. See *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.
- (22) The payment of cash in lieu of fractional shares in Controlled will be treated as if the fractional shares were distributed and then redeemed by Controlled. The cash payment will be treated as having been received as a distribution in full payment in exchange for the stock considered redeemed, as provided in

§ 302(a). Rev. Rul. 66-365, 1966-2 C.B. 116; Rev. Proc. 77-41, 1977-2 C.B. 574. The shareholder receiving such cash payment will recognize gain or loss measured by the difference between the amount of the cash received and the basis of the fractional share. Section 1001. Provided the fractional share interest is a capital asset in the hands of the shareholder, the gain or loss will be capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code. Sections 1221 and 1222.

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Proposed Transaction: (i) satisfies the business purpose requirement of § 1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporations or the controlled corporation or both (see §§ 355(a)(1)(B) and 1.355-2(d)); (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation under § 355(e)(2)(A)(ii); or (iv) whether the licenses granted to Controlled in step (12) constitute a transfer of property (see Rev. Rul. 69-156, 1969-1 C.B. 101).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, instead of attaching a copy of this letter to a return, taxpayers filing a return electronically may attach a statement to the return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be forwarded to your authorized representatives.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)